

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 498

SPONSOR: Senators Margolis and Wilson

SUBJECT: Immigrant Children/Residency Status

DATE: March 8, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Sanford</u> | <u>Whiddon</u> | <u>CF</u> | Favorable |
| 2. | <u>Brown</u> | <u>Maclure</u> | <u>JU</u> | Favorable |
| 3. | _____ | _____ | <u>HA</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill clarifies requirements for seeking Special Immigrant Juvenile Status (SIJS) and lawful permanent residency for undocumented alien children who have been abused, neglected, or abandoned and who are under the jurisdiction of the court. This bill directs the Department of Children and Families (DCF) or a community-based care provider to determine whether a child is a citizen of this country by the time of the first judicial review for the child.

Guidance is provided to DCF, community-based care providers, and the courts regarding the findings necessary to support a petition for SIJS and an application for lawful permanent residency. DCF or the community based care provider is required to seek SIJS status and permanent residency within 60 days after the entry of a court order determining that such action is in the best interest of the child.

This bill authorizes the court's jurisdiction to be extended solely to permit continued consideration of the application and petition of the child, when the application and petition have been submitted prior to the child's 18th birthday. Extended jurisdiction ends when the child reaches 22 years of age.

DCF is required to adopt rules to administer these provisions.

This bill creates section 39.5075, Florida Statutes.

II. Present Situation:

Most issues relating to immigrants are controlled by federal law. Under federal immigration law, a person who is not a citizen of this country is termed an "alien." Aliens may either be lawful

permanent residents or may be undocumented. Lawful permanent residents are identified by green cards. Without a green card, aliens are subject to deportation, are unable to work in recognized occupations, and are ineligible for other benefits.¹

The Special Immigrant Juvenile Status (SIJS) law is a federal statute that allows undocumented aliens who are children under the jurisdiction of the state juvenile court to become lawful permanent residents. It is only available to a child who is under the jurisdiction of a state juvenile court and who has been deemed eligible for long-term foster care by that state juvenile court. Federal regulations have defined “eligible for long term foster care” to mean that the court has found that family reunification is not a viable option for the child.² Finally, the juvenile court must make a finding that it is not in the child’s best interest to be returned to his or her home country. As soon as a child files an SIJS petition, he or she is protected from deportation. If the Federal Citizen and Immigration Services (CIS) denies the petition, however, CIS may use the information contained in the petition to begin removal proceedings against the child.³ As the grant of SIJS severs the child/parent relationship, once received, the child cannot petition for parents to become lawful permanent residents.⁴

Unlike most immigration matters, the determination as to whether a dependent child qualifies for SIJS and permanent residency is a joint one, reflecting the recognition of Congress that states retain primary responsibility and administrative competency to protect child welfare.⁵ The SIJS statute is thought to strike a balance between federal and state power by relying upon existing state systems to handle child welfare matters while at the same time requiring federal authorities to perform their function of regulating immigration.⁶

After an order is entered by the court with the required findings, the child may apply for special immigrant status and may petition for permanent resident status. In order for the petition to be granted, the child must fulfill other requirements that apply to all persons who become lawful permanent residents of the United States.⁷ Thus, even if a child qualified for special immigrant status, lawful permanent residency might be denied if other barriers existed. Such barriers include a criminal record, previous deportation, and some chronic illnesses.

If the petition for lawful permanent residency is granted, the child retains the benefits of the status into adulthood in the same manner as any other person with permanent residency. However, if the order is not entered while the state juvenile court has jurisdiction, the status cannot be granted and the petition for lawful residency on the basis of this status must be denied.

Florida dependency law does not specifically address dependent children who may be undocumented aliens. The Florida Administrative Code requires that dependent children who are

¹ Sally Kinoshita and Katherine Brady, *Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction*, Immigrant Legal Resource Center, January 2005, p. 2.

² See 8 CFR s. 204.11(a)

³ See Center for Human Rights and Constitutional Law Unaccompanied Minors Project, *Special Immigrant Juvenile Status (SIJS) Manual* (updated October 20, 2004), at <http://www.immigrantchildren.org/SIJS>.

⁴ *Id.*

⁵ Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children under the Special Immigrant Juvenile Statute*, 27 *Hastings Const. L.Q.* 597, 609 (2000).

⁶ *Id.* at 613.

⁷ Kinoshita and Brady, *supra* note 1, at 3-5.

undocumented aliens must receive the same services as U.S. citizens except where alienage or immigration status is explicitly referred to as a statutory condition of coverage or eligibility.⁸ However, these services are for the most part provided through the use of general revenue dollars, since federal funding for this population is generally prohibited. Currently, juvenile court jurisdiction over all dependent children ends when the child reaches 18 years of age. Child advocates report that the inability of the courts to retain jurisdiction in appropriate cases is one of the primary barriers to obtaining permanent residency for children who might otherwise qualify for it.

Although DCF is currently required by administrative rule to “promptly seek a special interest order from the Circuit Court on the child’s behalf” whenever DCF determines that the basis for such an order exists,⁹ the rule language lacks specific time requirements, case plan requirements, and an extension of jurisdiction provision. Additionally, there is no statutory guidance to the courts regarding consideration of any petitions of this nature which might be brought by DCF or by private attorneys representing the child.

In the same rule, DCF is currently required to handle the applications for SJIS “visa” either directly, by contract, or through the use of volunteer attorneys.¹⁰

Benefits to children who are granted permanent residency include the rights to live and work permanently in the United States, to travel in and out of the country, and, after five years, to apply for U.S. citizenship. In addition, Florida may be eligible for federal funds to support foster care for children who are permanent residents, while the state cannot receive funds for them while they are undocumented.

III. Effect of Proposed Changes:

This bill enhances the ability of undocumented, alien children who are abused, neglected, or abandoned to receive the classification of Special Immigrant Juvenile Status (SIJS) and become lawful, permanent residents.

This bill defines the term “eligible for long-term foster care” as a situation in which reunification with parents is not an appropriate permanent solution for the child. “May be eligible for special immigrant juvenile status under federal law” indicates that the child has been found dependent based on abuse, neglect, or abandonment allegations; the child is eligible for long-term foster care; it is in the child’s best interest to stay in the U.S.; and the child remains under juvenile court jurisdiction. These provisions help eliminate confusion as to the required elements of the petition to the court regarding undocumented alien dependent children.

This bill requires DCF or community-based care providers to identify whether children who are adjudicated dependent are citizens of the United States no later than the first judicial review and to keep the court apprised of efforts to address the child’s citizenship status. Where abuse, neglect, or abandonment allegations have been made, this bill requires services to be provided regardless of the child’s citizenship, unless statutorily precluded for specific services. If the child

⁸ Chapter 65C-9, F.A.C.

⁹ Rule 65C-9.003(7), F.A.C.

¹⁰ Rule 65C-9.003(8), F.A.C.

is not a citizen, DCF or the community-based care provider is required to include in the child's case plan a recommendation as to whether the permanency plan for the child will include remaining in this country.

This bill requires that, if the plan includes the child remaining in this country, DCF or the community-based care provider evaluate whether, under federal law, the child may be eligible for SIJS. However, the determination as to whether an order supporting an application for this status is granted remains in the discretion of the court, which must consider the best interests of the child, a component of which is the express wishes of the child when possible.

The bill directs DCF or the community-based care provider to file a petition requesting SIJS and an application for adjustment of status to lawful permanent residency within 60 days after an order supporting such a petition and application is granted, using either its own, contracted, or volunteer attorneys.

If the petition and application have been filed but have not been granted by the time the child reaches 18 years of age, the court is authorized to retain jurisdiction solely to permit continued consideration of the petition by federal authorities. This expanded jurisdiction expires no later than the child's 22nd birthday.

In any judicial review report submitted to the court for a child for whom the court has granted the SIJS, the report shall contain information on the status of the child's petition and application process.

DCF is required to adopt rules to administer these provisions.

The bill provides for an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will enhance the ability of currently undocumented alien children who have been abused, neglected, or abandoned to attain lawful permanent residency status in this country. Attaining this status is a necessary prerequisite to becoming U.S. citizens, obtaining recognized work, and becoming U.S. taxpayers.

C. Government Sector Impact:

The Department of Children and Families projects no fiscal impact as a result of this bill.¹¹ The Agency for Health Care Administration indicates that increased state Medicaid expenditures may result for children who become eligible and otherwise could not qualify based on their alien status, although this impact is indeterminate at this time. The Office of State Court Administrator (OSCA) expects some additional need for court hearings, with associated costs, but is unable to project the number of hearings or the costs.

This bill is expected to increase the amount of federal funding for this population, which is currently funded exclusively through general revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

National experts contacted for the purpose of this bill analysis are of the opinion that there are no international agreements or federal statutes which would adversely affect the provisions of this bill.¹² According to Howard Davidson, Executive Director of the American Bar Association Center on Children and the Law (Center), neither the Vienna Convention nor the federal Adoption and Safe Families Act (ASFA) would appear to conflict with the bill. In fact, according to Mark Hardin, also of the Center, ASFA would not likely apply to these children at all, since the state cannot receive federal funding for them while they are in the status of undocumented alien.

Becky Sharpless, Executive Director of the Florida Immigrant Advocacy Center, estimates that approximately 25 children per year will be eligible to apply for SIJS through the provisions of this bill. The Department of Children and Families is unable to estimate the number of children likely to be served but characterized the number as a “small population.”

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

¹¹ In fact, the bill may be slightly revenue-positive, as Florida cannot be federally reimbursed for foster care services to children who are non-documented aliens, but can be so reimbursed for those who achieve permanent residency status.

¹² Courts which have considered the application of Vienna Convention provisions to child foster care issues have uniformly determined that the requirements of the Convention are limited to notification of the consulate of the child’s home country in some circumstances when the child is taken into custody. *See, e.g., E.R., C.R., N.R., and J.O.R. vs. Marion County Office of Family and Children*, 729 NE 2d 1052 (Ind. Ct. App. 2000).

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
